



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC

### Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses. The tenants were represented at the hearing by tenant, J.G. (the “tenant”), while the landlords were represented at the hearing by landlord, R.D. (the “landlord”).

Both parties confirmed receipt of each other’s evidentiary packages, and the landlord confirmed receipt of the tenant’s application for dispute.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award?

### Background and Evidence

Undisputed information provided by the tenant explained that this tenancy began in June 2017 and ended on September 28, 2017 after the landlord was granted an Order of Possession for non-payment of rent, by an Arbitrator with the *Residential Tenancy Branch*. Rent was \$2,000.00 per month, and the security deposit of \$1,000.00 was ordered by the Arbitrator to be withheld by the landlord following the conclusion of the tenancy.

The tenant said he was seeking a monetary award of \$7,000.00 for “negligence, frustration and health problems” associated with the rental unit. The tenant said that he could not provide a precise breakdown of the figure cited in his application for a monetary award but noted that it reflected a return of the rent paid during the tenancy, “negligence” and an award for the alleged associated health problems that the tenants suffered as a result of mould that was purported to have been present in the rental unit. The tenant said that his children saw a doctor and were given “some kind of thing” for “it.” When asked to provide more detail regarding this aspect of his claim, the tenant said he did not have his notes before him at the hearing, and therefore could not provide a precise breakdown.

The tenant explained that he felt the home was unusable and unfit for occupation. The tenant described numerous aspects of the home which he felt were not to code; he detailed an alleged grow-op which had previously occupied the home resulting in faulty wiring, and noted several shortcomings which he argued placed his family at great danger. Specifically, the tenant described an inability to run the air conditioning unit in the home (which he attributed to faulty wiring), broken banisters and hand railings, a washer and dryer drain which did not effectively remove waste water, a lack of screens on windows, and mould on the bottom floor of the rental unit which made the entire area un-usable. The tenant acknowledged that he did not receive an official home inspection during his time in occupation of the home, but said that his partner’s father, who was a home inspector, visited the home and deemed it “below code.”

As part of their evidentiary package, the tenants submitted numerous photos and a written submission detailing their concerns with the rental unit and reasons why they felt they should be entitled to a monetary award.

The tenant said that these concerns were voiced to the landlords, but he said that the landlords ignored their worries. The tenant said the landlords informed him they could not afford to make the necessary repairs, and in fact sold the property, shortly after the tenancy ended.

The landlord disputed all aspects of the tenants’ application and asked that the entirety of the tenants’ application to be dismissed. The landlord explained that the home had been purchased in May 2015 from a certified and reputable real estate corporation who had completed a full renovation of the property prior to the purchase. The landlord disputed the tenant’s description and account of the property and explained that the entire premises adhered to all local building codes. The landlord said that when issues

were identified to him, he sought the assistance of a contractor to make any repairs required in the rental unit.

As part of his evidentiary package, the landlord provided a written statement which detailed his interactions with the tenants, noting when repairs were made and describing a satisfactory incoming condition inspection of the unit on June 12, 2017. In addition, the landlord provided copies of text messages between the parties which showed the tenants' satisfaction with the property.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a claim for a monetary award.

The tenants have applied for a monetary award of \$7,000.00, though no specific breakdown of this figure was provided. Tenant J.G., who attended the hearing for the tenants explained that it represented, "negligence, frustration and health problems." The tenant cited numerous alleged shortcomings with the property, noted instances of mould growth on the bottom floor of the rental unit and described a doctor's consultation for his children which purportedly resulted from mould in the rental unit.

Section 32(1) of the *Act* states, "A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant."

Other than the tenant J.G.'s testimony, little evidence was presented at the hearing by the tenants demonstrating that the residential property was not maintained in a state of decoration or repair that did not comply with health, safety and housing standards as required in section 32(1)(a) of the *Act*. The tenant acknowledged that no formal property inspection of the home was completed, no medical information was provided to the hearing documenting the problems suffered by his children that are alleged to have

resulted from the presence of mould in the rental unit, and the mould itself was not tested.

I find some evidence was presented by the landlords that the tenants were satisfied with the rental unit, and were happy with repairs that were made to the premises. This evidence in the form of a text message exchange between the parties' shows that the landlords and tenants enjoyed a cordial relationship and that issues identified as problematic to the landlord were taken seriously and quickly addressed.

The tenants have failed to provide sufficient detail in their application package demonstrating loss under the tenancy and for the reasons cited above, I find that the tenants are not entitled to a monetary award.

### Conclusion

The tenants' application for a monetary award is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 8, 2018

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Residential Tenancy Branch